

REMARKS

Applicant respectfully requests reconsideration. Claims 45-47, 52 and 94-100 were previously pending in this application. By this amendment, Applicant is canceling claim 52 without prejudice or disclaimer. Claim 45 has been amended. No new claims have been added. As a result, claims 45-47 and 94-100 are pending for examination with claim 45 being an independent claim. Basis for the amendment to claim 45 can be found in the specification, at least on page 8, line 2, and on page 19, lines 14-18. No new matter has been added.

Claim Objections

The Examiner objected to claim 52 under 37 C.F.R. §1.75 as being a substantial duplicate of claim 45. In response, Applicant has canceled claim 52 without prejudice or disclaimer.

Accordingly, Applicant respectfully requests that this objection be reconsidered and withdrawn.

Rejections Under 35 U.S.C. §102

The Examiner rejected claims 45, 52, 95 and 100 under 35 U.S.C. §102(b) as being anticipated by Yamamoto et al. (1992) as evidenced by Tokunaga et al. (1984, Abstract only).

In response, Applicant has amended claim 45 without prejudice or disclaimer. Claim 45 as amended recites an immunostimulatory nucleic acid that is non-palindromic. Applicant submits that the Yamamoto et al. publication fails to disclose this limitation. Rather, Yamamoto et al. teaches that the presence of certain palindromic sequences “is essential for the immunostimulatory activity of oligonucleotides.” See the last sentence of the abstract of Yamamoto et al. Applicant submits that the Tokunaga et al. publication also fails to teach the use of non-palindromic sequences.

Claim 52 has been canceled. Claims 95 and 100 are dependent on claim 45. Accordingly, Applicant submits that claims 95 and 100 are not anticipated by Yamamoto et al. as evidenced by Tokunaga et al. at least for the same reasons set forth above in connection with claim 45.

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §102 is respectfully requested.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 45, 47, 52, 95, 96, 97, and 100 under 35 U.S.C. §103(a) as being unpatentable over Yamamoto et al (1992) as evidenced by Tokunaga et al. (1984, Abstract only) and Legendre and Szoka (1992).

Claims 45, 46, 47, 52, 94, 95, 98, 99, and 100 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yamamoto et al. (1992), (as evidenced by Tokunaga et al. 1984, Abstract only), Legendre and Szoka (1992) and US Patent No. 4,824,775, Boussiotis et al. (1993) and Lagranderie et al. (1993, Abstract only).

Applicant submits that none of Legendre and Szoka, US Patent No. 4,824,775, Boussiotis et al. or Lagranderie et al. teach or suggest the use of a non-palindromic nucleic acid as currently recited in amended claim 45. Therefore, Applicant submits that claim 45 is patentable over these cited publications.

Claim 52 has been canceled. Claims 46, 47, and 94-100 are dependent on claim 45. Accordingly, Applicant submits that claims 46, 47, and 94-100 are patentable over the cited publications at least for the same reasons set forth above in connection with claim 45.

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §103 is respectfully requested.

Double Patenting Rejection

The Examiner provisionally rejected claims 45-47, 52, and 94-100 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 63-66, 68 and 71-78 (withdrawn) of copending Application No. 10/928,762. Applicant submits that this application is now abandoned.

In addition, claims 45-47, 52, and 94-100 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 42, 44-53, 59, 64-69, 71-73, and 75-80 of copending Application No. 10/719,493. Applicant respectfully requests that this provisional rejection be held in abeyance until a determination of allowable subject matter is made. However, Applicant draws the Examiner's attention that the parent

application of Application No. 10/719,493, namely Application No. 09/337,619, has now issued as U.S. Patent No. 6,653,292.

Claims 45-47, 52, and 94-100 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 47-52 of copending Application No. 11/071,836. Applicant respectfully requests that this provisional rejection be held in abeyance until a determination of allowable subject matter is made.

Claims 45-47, 52, and 94-100 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 42 and 44-48 of copending Application No. 11/503,377. Applicant respectfully requests that this provisional rejection be held in abeyance until a determination of allowable subject matter is made.

Finally, claims 45-47, 52 and 94-100 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 28, 29, and 31 of copending Application No. 11/645,106. Applicant respectfully requests that this provisional rejection be held in abeyance until a determination of allowable subject matter is made.

CONCLUSION

In view of the foregoing, the present application is believed to be in condition for allowance. A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the application in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, any necessary extension of time is hereby requested. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. C1039.70074US00.

Respectfully submitted,

By: /Patrick R.H. Waller/
Patrick R.H. Waller, Ph.D., Reg. No. 41,418
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
Telephone: (617) 646-8000

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